IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 825 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R.A.VARMA,ASST COMMR

Versus

LAXMI INDUCTION

Appearance:

MR BB NAIK WITH MR RP BHATT for Petitioner

MR KH KAJI for Respondent No. 1

MR UR BHATT, APP for Respondent No. 6

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/09/2000

ORAL JUDGEMENT

Present Criminal Revision Application is directed against the judgment and order dated 3-12-1990 passed by

the learned Addl. Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No.134 of 1990.

2. The case of the prosecution in short is that the present respondent Nos.2 to 5 were managing the affairs of the respondent No.1-partnership firm and they were assessed to tax under the Income Tax Act, 1961 (`the Act' for short) by the Assistant Commissioner of Income Tax, Ahmedabad for the Assessment Year 1986-87. The Assessing Officer during assessment detected that the firm had accepted cash on 24-1-1985 in violation of the prohibition contained in Sec.269 thereby respondent No.1-firm committed offence punishable under Sec.276 DD of the Act and respondent Nos.2,3,4 and 5 committed offence punishable under Sec.276 DD read with Sec.278 B of the Act. Therefore, a complaint was filed before the learned Additional Chief Metropolitan Magistrate Court at Ahmedabad which was registered as Criminal Case No.134 of 1991. The learned Magistrate, at the end of trial, imposed a fine of Rs.250/- for each respondent and imprisonment till rising of the Court which is giving rise to file the present Criminal Revision Application.

3. I have heard Shri D.B.Naik with Shri R.P.Bhatt, learned counsel for the petitioner-original complainant, Mr.K.H.Kaji, learned counsel for the respondent Nos.1 to 5, Mr.U.R.Bhatt, learned APP for the respondent No.6-State.

4. Drawing my attention towards the case of R.A. Varma, Assistant Commissioner of Income-Tax Vs.Laxmi Induction and Others, reported in [1995] 216 I.T.R. 555 more particularly at page 563 C & D), learned counsel for the respondent Nos.1 to 5, Mr.K.H.Kaji has argued that this judgment squarely covers the issue involved in the present petition. It reads as under:-

> "The doctrine of maintaining the homogeneity of judgments is not such an inflexible doctrine that the Courts are expected to mechanically follow the same without applying their mind to the correct, proper and legal meaning of a particular word, phrase or expression used in the section. This doctrine of maintaining the homogeneity in judgments cannot be stretched to the extent of absurdity."

5. Relying upon the above observations of this Court, this Criminal Revision Application is partly allowed. The impugned order imposing sentence of fine on the partners of the firm is hereby ordered to be quashed

and set aside. The accused firm or its partners are hereby directed to pay fine which is equivalent to the amount of loan or deposit in question on or before 31-12-2000 and in default, each of the partners to undergo rigorous imprisonment for a period of fifteen days. Rule is made absolute accordingly.

(R.P.DHOLAKIA,J.)

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